

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-207745

DATE: November 16, 1982

MATTER OF: Julie Research Laboratories, Inc.

DIGEST:

1. Protest against alleged specification improprieties in first-step solicitation of a two-step procurement must be filed prior to the closing date for receipt of first-step proposals. Protest filed more than 4 months after the closing date is untimely.
2. Issue considered in previous decisions is not "significant issue" within the meaning of GAO Bid Protest Procedures, which permit consideration of untimely protests when a significant issue is raised.
3. Mere speculation that protester might go out of business if it files a protest since the contracting agency may discontinue discussions on another contract is a matter of business judgment, not a supervening circumstance under the "good cause" exception to Bid Protest Procedures permitting consideration of an untimely protest.

Julie Research Laboratories, Inc. (Julie), protests the making of any award under the United States Army Missile Command (Army) request for proposals (RFP) DAAH01-82-R-A274 for the acquisition of fixed site automated meter calibration systems.

We dismiss the protest as untimely.

RFP -A274 was the second step of a procurement for the meter calibration systems. The procurement was initiated on January 14, 1982, by the issuance of RFP DAAH01-82-R-A193, which solicited one meter calibration system from each participating company. It was synopsized in the Commerce

023937

Business Daily (CBD) on the same date. In both the RFP and CBD notice, all potential contractors were notified that contractors not awarded a contract under RFP -A193 would not be considered for award under RFP -A274 ("the follow-on hardware buy"). The closing date for RFP -A193 was January 29, 1982. Julie submitted a "no-bid," stating that it would not participate in the procurement. On February 10, 1982, awards were made to Valhalla Scientific Inc., Rotek Instrument Corporation and John Fluke Manufacturing Company. Julie learned of these awards on February 19, 1982. On April 5, 1982, RFP -A274 was issued and, as noted in RFP -A193, it was restricted to the three companies mentioned above. Notice of the issuance was published in the CBD on April 6, 1982. The closing date for receipt of proposals was scheduled for June 3, 1982. On June 2, 1982, Julie filed its protest with our Office.

Essentially, Julie's protest concerns alleged specification improprieties contained in RFP -A193. Julie argues that the Army need not require the more costly meter testers; rather, precision calibrators are really what will satisfy the Army's minimum needs. According to Julie, as the RFP is written, "gold-plating" is the obvious result. Julie also questions the limitation of one meter calibration system per offeror. It is Julie's position that an economic production run should be included in the base quantity which would give the Army realistic cost pricing data. Julie submits that the limitation by the Army to one meter calibration system was to eliminate Julie from the competition.

Our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1) (1982), in pertinent part, state:

"Protests based upon alleged improprieties in any type of solicitation which are apparent prior to * * * the closing date for receipt of initial proposals shall be filed prior to * * * the closing date for receipt of initial proposals. * * *"

Furthermore, we have held that improprieties in the first step of a two-step procurement must be protested prior to

the first-step closing date. Numax Electronics, Inc., B-191206, August 7, 1978, 78-2 CPD 96; Ken-Mar Machine and Health Equipment, Inc., B-188529, July 14, 1977, 77-2 CPD 26; 53 Comp. Gen. 357 (1973). Therefore, we find untimely Julie's protest filed with our Office on June 2, 1982, more than 4 months after the closing date for receipt of proposals under the first step.

However, Julie submits that, even if we find that its protest is untimely, our Office should consider the matter under our "significant issue" and "good cause" exceptions. See 4 C.F.R. § 21.2(c) (1982). Julie argues that its protest raises "an issue of major national interest." It is Julie's position that as the congressional watchdog of the public purse, GAO should not remove itself from review of this procurement matter. Julie believes that GAO's presence is important since it will prevent the Army from conducting this procurement contrary to the intent of the United States Senate as expressed during the November 5, 1981, hearings of the Senate Governmental Affairs Committee. In regard to the "good cause" exception, Julie contends that it was prevented from protesting since it was holding discussions with the Army concerning award of a different contract. Julie posits that if it was not awarded that contract, it might not have remained in existence.

The term "significant" as used in our Bid Protest Procedures has frequently been explained in our decisions. In order to be significant, the protest must involve a procurement principle of widespread interest, 52 Comp. Gen. 20 (1972), or affect a broad class of procurements, Singer Company, 56 Comp. Gen. 172 (1976), 76-2 CPD 481, and the issue must not have been considered by our Office previously. D.A. Cruciani and Frank A. Agnone, B-187958, December 21, 1976, 76-2 CPD 518. The exception is applied sparingly so that the timeliness standards do not become meaningless. Field Maintenance Services Corporation, B-185339, May 28, 1976, 76-1 CPD 350.

Julie's protest, as noted above, is questioning the Army's drafting of the specifications to meet its minimum needs. We have considered this issue in previous decisions. See Ronald Campbell Company--Reconsideration, B-196424, December 13, 1979; Reconsideration of National

Biomedical Research Foundation protest, B-182270, December 6, 1974, 74-2 CPD 317; Leasco Information Products, Inc.; et al., B-180460, June 10, 1974, 74-1 CPD 314. Therefore, we will not consider this protest under the "significant issue" exception.

With respect to the "good cause" exception, we have held that it generally refers to some compelling reason, beyond the protester's control, which prevented it from filing a timely protest. See Mobility Systems, Inc., B-191074, March 7, 1978, 78-1 CPD 179. Speculation that if Julie filed a protest on this procurement, the Army would have discontinued discussions with Julie on another contract which might have resulted in Julie going out of business is a matter of business judgment, not a supervening circumstance under the "good cause" exception to the Bid Protest Procedures. Accordingly, we will not consider the protest under that exception either.

On October 28, 1982, we received additional correspondence from Julie. In that correspondence, Julie alleges for the first time that the specifications in RFP -A274 (June 3, 1982, closing date) contradict the specifications in the prior RFP -A193. This allegation also is dismissed as untimely. As indicated above, our Bid Protest Procedures require that apparent improprieties in an RFP be protested prior to the closing date for receipt of proposals.

However, since our Procurement, Logistics and Readiness Division is conducting an audit of the Army's actions on the calibration program, the record in this case will be held for consideration under that audit.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel